

11256

PL II

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-195242

DATE: August 29, 1979

MATTER OF: Sergeant Ted A. Morell, USA

- DIGEST: 1. Payment may not be made on Army member's claim for reimbursement of costs incurred for storage of household goods and transportation of dependents not authorized by law and regulations even though he was erroneously advised by Army officials that travel could be performed by his dependents at Government expense. In the absence of specific statutory authority the United States is not liable for the negligent or erroneous acts of its officers, agents, or employees, and the member therefore gained no entitlement to the expenditures by reason of the erroneous advice.
2. Claim of Army member for costs incurred in reliance on erroneous advice furnished by Army officials that travel could be performed by his dependents at Government expense, is not a matter presenting such elements of unusual legal liability or equity which would justify reporting the claim to the Congress under the Meritorious Claims Act, 31 U.S.C. 236 (1970).

Sergeant Ted A. Morell, USA, requests ^areconsideration of our Claims Division settlement of February 13, 1979, which denied his claim for reimbursement of dependent travel and storage costs of household goods (HHG) and further determined that his claim was not an appropriate matter for submission to the Congress under the Meritorious Claims Act. The denial of his claim is sustained since at the time of his permanent change of station (PCS), the Joint Travel Regulations (JTR) governing movement of Department of Defense (DOD) personnel did not authorize service members in the grade of E-4, with 2 years' service or less, transportation of dependents or shipment of HHG at Government expense. Further, his claim may not be reported to Congress as it does not involve circumstances of an unusual nature unlikely to arise with respect to other claimants.

^{He} Sergeant Morell was reassigned from Fort Campbell, Kentucky, to Germany in April 1978. At the time of this PCS, he was an E-4

*Storage claim
Trans. " "
Relocation " "
Trans. costs
Travel " "
Dependents
Military personnel*

000381 110241

had not completed
with less than 2 years' service. He did not complete 2 years of service until June 15, 1978. Through administrative error dependent travel was authorized on his amended travel orders and he was assured by a noncommissioned officer that his family would be given deferred travel to Germany. However, the Fort Campbell transportation office did inform him that he could not ship HHG, but did not make clear the reasons for refusal. His unit first sergeant suggested that he request that his transfer be deferred, but due to administrative problems the request was not processed.

After storing his HHG and making temporary living arrangements for his family, Sergeant Morell went alone to his duty station in Germany. Upon arrival, housing office personnel explained to him that he was not qualified for the HHG shipment or dependent travel because he departed the United States before he had 2 years' service. Although authorization was subsequently obtained to move Sergeant Morell's family to Germany on a space available basis, his wife did not desire this means because of the inconvenience and expected costs associated with waiting for a flight. Instead, he paid the transportation costs and his family arrived in Germany on August 26, 1978.

Paragraphs M8003 and M8250 (ch. 301, March 1, 1978) of the JTR, applicable at the time, provide that a member in the grade of E-4 with 2 years of service or less, is limited in connection with a permanent change of station to a weight allowance of 225 pounds for shipment of HHG from the old duty station to the new duty station. In view of this weight limitation, he was not eligible to ship his HHG to his new permanent station in Germany. The provisions of 1 JTR concerning the temporary storage of HHG at Government expense relate directly to the entitlement of a member to ship his HHG. 37 U.S.C. 406(b) (1976). Thus, where no authority exists for the shipment of HHG, correspondingly, no authority exists for the storage of HHG at Government expense.

Paragraph M7000 (ch. 298, December 1, 1977) of the JTR, also applicable, provides that enlisted members in pay grade E-4 with 2 years' service or less are not authorized transportation of dependents at Government expense upon a permanent change of station. Furthermore, a formerly ineligible member who attains eligibility for transportation of dependents at Government expense under para. M7000, does not become entitled to such transportation to the duty station where he attains eligibility. See 1 JTR M7006.

Even though Government transportation was arranged for his dependents at a later date on a space available basis, this would not provide a basis for reimbursement of the cost of commercial transportation in the absence of orders authorizing such transportation.

While it is regrettable that initially an error was made in this case, there is no authority under 1 JTR for payment of HHG storage costs or transportation of dependents of this member and we are aware of no statute which would provide a legal basis for the payment by the Government of amounts expended by a service member in anticipation of payment when such payments could not legally be made. The fact that he was given erroneous information does not provide a basis for payment of the claim. In this connection, this Office and the courts of the United States have long followed the rule that in the absence of specific statutory authority the Government is not liable for the negligent or erroneous acts of its officers, agents, or employees, even though committed in the course of their official duties. Hence, the receipt of information later established to be erroneous by one dealing with a Government official does not afford a legal basis for a payment from appropriated funds. See 56 Comp. Gen. 943 (1977); Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947); Posey v. United States, 449 F. 2d 228, 234 (1971); and Parker v. United States, 198 Ct. Cl. 661 (1972). It is our view that the member did not gain any entitlement to have the household goods stored and his dependents travel at Government expense simply because he was misadvised in the matter, and his claim for reimbursement of these expenditures is therefore not proper for payment.

With respect to the question of reporting this matter to the Congress with a recommendation that special legislation be enacted for the member's relief, the Meritorious Claims Act of 1928, codified as 31 U.S.C. 236 (1970), provides as follows:

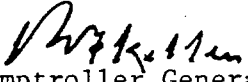
"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the

B-195242

Congress by a special report containing the material facts and his recommendation thereon."

It has been the consistent position of this Office that the procedure provided by the Meritorious Claims Act is an extraordinary one, and its use is limited to extraordinary circumstances. The cases reported for the consideration of the Congress generally involve equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem. We are aware of other cases of members incurring expenses in circumstances similar to this case. We do not believe that Sergeant Morell's case presents such elements of unusual legal liability or equity which would justify reporting the claim to the Congress for its consideration under the Meritorious Claims Act.

Accordingly, the February 13, 1978 settlement of our Claims Division disallowing Sergeant Morell's claim is sustained.


Deputy Comptroller General
of the United States